

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K04-S-141, K04-S-142, K04-S-143, K04-S-144**

RICHARD BROWNING, ET AL

APPELLANT

V.

ORDER NO. K-19385

**HARLAN COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals has delegated authority to the hearing officers pursuant to KRS 13B.030. The hearing officers entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals, through its hearing officers, Nancy Mitchell and Randall Phillips, conducted a hearing in this matter on June 27, 2005 and made the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property located at South Main Street, Harlan, Kentucky. The Harlan County Property Valuation Administrator assessed the property on Bailey Street (K04-S-141) at \$62,000. The taxpayer or Appellant values the property

at \$26,000. The Harlan County Board of Tax Appeals valued the property at \$62,000. The Harlan County Property Valuation Administrator assessed the property on Bailey Street (K04-S-142) at \$40,000. The taxpayer or Appellant values the property at \$28,000. The Harlan County Board of Tax Appeals valued the property at \$40,000. The Harlan County Property Valuation Administrator assessed the property on Jones Street (K04-S-143) at \$25,000. The taxpayer or Appellant values the property at \$22,000. The Harlan County Board of Tax Appeals assessed the property at \$25,000. The Harlan County Property Valuation Administrator assessed the property on East Clover Street (K04-S-144) at \$125,000. The taxpayer or Appellant values the property at \$62,700. The Harlan County Board of Appeals assessed the property at \$125,000. The Appellants filed timely appeals from the local board with the Kentucky Board of Tax Appeals.

The Appellants bought the South Main property # K04-S-141 in 1970 for \$14,500, # K04-S-142 in 1960 for \$7,000, # K04-S-143 in 1980 for \$12,000 and # K04-S-144 in 1960 for \$29,000. That PVA argues that Mr. Harold Parsons had paid \$600,000 for a comparable lot on which Mac's Supermarket was built and Mr. Blanton had used this as one of his comparables in arriving at the assessment of above properties. Mr. Blanton had deducted \$100,000 for a building which sat on the land so he valued the land at \$500,000 divided by 3.43 acres or approximately \$142,000 per acre considering location and other factors.

The Appellant offered the following evidence in support of Appellant's appeal: While hearing a similar case K04-S-146 and K04-S-147 in which Mr. Blanton had used the same comparable, Mr. Robinette's attorney called in Mr. Harold Parsons who

testified that the \$600,000 paid for the lot included a building valued at \$100,000 as well as the remainder of the Mac's Supermarket lease. He further stated that he received a separate tax billing for the Supermarket in the amount of \$250,000. Mr. Parsons had also stated that he assigned a value of \$475,000 for the improvements to the property and \$125,000 to the land. Also Mr. Vance Mosley, a certified Real Estate Appraiser and Real Estate Broker, testified that he appraised lots K04-S-141, K04-S-142, and K04-S-143 for \$71,500 due to use of low end quality materials and the fact that Hwy 421 had been redirected away from these lots.

It is the finding of this hearing that the Appellant did sustain his burden of proof regarding his challenge to the final order of the Harlan County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of the hearing officers, the fair cash value of the property in question as of January 1, 2004 for #K04-S-141 is \$26,000, #K04-S-142 is \$28,000, #K04-S-143 is \$22,000 and #K04-S-144 is \$62,700.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Harlan Board of Assessment Appeals, pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Harlan Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County*

Property Valuation Administrator v. Oxford Properties, Inc., Ky. App., 726 S. W. 2nd 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W. 2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S. W. 2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Harlan County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property’s fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky. App., 715 S. W. 2d 888, 889 (1986).

Based upon the facts as established in this hearing, the Board concludes that the fair cash value of the subject property as of January 1, 2004 is \$26,000, \$28,000, \$22,000 and \$62,700 respectively.

RECOMMENDED ORDER

It is recommended that the November 12, 2004 final rulings of the Harlan County Board of Assessment Appeals be reversed and the real property be assessed at a fair cash value of \$26,000 for K04-S-141, \$28,000 for K04-S-142, \$22,000 for K04-S-143 and \$62,700 for K04-S-144 respectively as of January 1, 2004.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officers, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The November 12, 2004 final rulings of the Harlan County Board of Assessment Appeals are reversed and the real property is to be assessed at a fair cash value of \$26,000 for K04-S-141, \$28,000 for K04-S-142, \$22,000 for K04-S-143 and \$62,700 for K04-S-144 respectively as of January 1, 2004.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: October 12, 2005**

**KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING**

**NANCY MITCHELL
CHAIR**